

MINUTES
BOARD OF ADJUSTMENT
September 7, 2006

THOSE IN ATTENDANCE

Gary Soule, Chairman	Jason Jaggi, City Planner
Anne Martin	Kevin O'Keefe, City Attorney
Rick Bliss	
Mel Disney	
Victor Cohen	

Chairman Soule called the meeting to order at 5:00 p.m. and apologized for the delay. He introduced himself and asked each member to do the same.

MINUTES

The minutes of the meeting of August 3, 2006 were presented for approval. The minutes were approved, after having been previously distributed to each member.

Chairman Soule welcomed everyone to the meeting. He stated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of 5 members and that four members must vote in favor of a variance in order for the requested variance to be granted. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He reminded everyone that all testimony is tape-recorded and the minutes produced from this recording. He then asked that all individuals wishing to speak to please speak clearly. He stated that generally, the City will present its exhibits first, after which the applicant will make their presentation, then questions/comments from the Board members will ensue after which audience comments will be solicited and finally, a vote will take place.

Chairman Soule indicated that the first order of business this evening is the annual election of a Chairman and Vice-chairman.

Rick Bliss nominated Gary Soule to serve (continue to serve) as Chairman. The nomination was seconded by Mel Disney and unanimously approved by the Board.

Chairman Soule nominated Mel Disney to serve (continue to serve) as Vice-chairman. The nomination was seconded by Anne Martin and unanimously approved by the Board.

AN APPEAL FROM CHESAPEAKE HOMES FOR THE PROPERTY AT 28 BROADVIEW
(POSTPONED FROM AUGUST 3RD MEETING)

Everyone who was in attendance at the time of swearing-in who wished to speak in regards to the variance request was sworn-in by the recording secretary.

Chairman Soule asked Jason Jaggi to provide an overview of the proposal.

Jason Jaggi began a PowerPoint presentation. The following slides were presented:

- Location map of Claverach Park, noting the zoning designation of R-2; subject property highlighted;
- Aerial photograph of the area depicting the unusual layout of the Claverach Park subdivision;
- Existing photographs of the property;
- General information regarding the setback requirements for this particular lot.

Kevin O'Keefe requested that the City's Ordinances, specifically the Zoning Ordinance with particular regard to Section 15.8.2 as well as the application and supporting documents be entered into the record. City staff's presentation is also entered into the record.

Mr. Feder announced that he is an attorney with Husch & Eppenberger (190 Carondelet Plaza) and has previously served on the City's Board of Adjustment and the City's Plan Commission/ Architectural Review Board. He indicated that he, too, is a Clayton resident. He indicated that he technically represents Mr. and Mrs. Deutsch (purchasers) and has been working with them since early 2006. He indicated that he has been informed of e-mail correspondence and petitions sent to City staff and of his knowledge of an anonymous letter (petition) distributed throughout the neighborhood. He asked that it be made clear that this is not a spec home; that this is a custom home being built for Mr. and Mrs. Deutsch. He stated he has no explanation for the "for sale" sign on the property, but would guess that it has probably been there since early spring. He stated it is the Deutschs' intention to build a home that everyone can be proud of and one that is built consistent with today's market. He stated that renovation of the existing home was considered, but that the decision was made to demolish the structure and start from scratch. He stated this decision was made for various reasons. Mr. Feder then distributed a larger map of the Claverach Park area, which shows clearly that the lot is an irregular shape (fan shaped) and that is significant in terms of the design and the reason that this variance is being sought. He stated this is a difficult lot to build on. He indicated that most of the lots in the area are rectangular in shape. Mr. Feder then indicated that initially, there was some miscommunication and/or confusion in whether a variance was actually needed, but that the City's determination that a variance would be required was accepted and therefore, they moved forward with the request for a variance. Mr. Feder commented that this last statement was not mentioned to offer any criticism). He indicated that if the footprint were reduced by 8 feet, the rooms would be too small and that the owners decided to pursue a variance. He commented that this meeting is not about a tear-down and is only about whether to grant a variance. He stated that plans for the new

house are available if anyone wishes to view them. He stated it was his understanding that the primary issue at the previous meeting with the Bradley's was their concern of where the property line is located and that they were not specifically objecting to the variance itself. He indicated that the Bradley's were offered the opportunity to obtain a new survey, which they have done, and evidently there is still some disagreement with the location of the property line. He stated as the Deutschs' attorney, he would advise them not to close on the property until that issue is resolved but that he does not believe this is an issue for this Board. He asked that it be clarified that with respect to the anonymous letter, this is not a spec house, this is not a mass-produced home and the "for sale" sign has been up since spring. He added that he does not believe this to be a precedent setting matter. Mr. Feder then referred to a letter submitted by Mitchell Margo, 55 Claverach Drive, supporting the variance request. He added that there have been a number of variances granted in Claverach Park over the years and that he believes the true problem here is that the neighbors do not want to see the existing structure demolished. He reiterated that this is not an issue for this Board. He indicated that staff's report suggests the City's support of the variance. He stated that he believes this is an ideal case for a variance as it is driven by the shape of the lot and believes this variance should be approved as it would not result in a change in the district map, would not impede air or light, would not congest streets, nor would impact property values. He reiterated the difficulty of building on a fan shaped lot and asked for this Board's approval of the requested variance.

Chairman Soule asked staff if Mr. Feder's comment that the staff report indicates support of the variance is accurate.

Jason Jaggi commented that it is the role of staff to present the facts of the case and that it would be incorrect to indicate staff's full support since staff has yet to hear full testimony.

Chairman Soule clarified that it is not staff's position to provide a recommendation but to simply assist the Board.

Jason Jaggi concurred. He stated the staff report is for informational purposes only.

Mr. Feder apologized for the previous comment regarding staff's position and agrees there is no final recommendation by staff, just its findings.

Anne Martin asked how long the house has been vacant.

Mr. Bill Roper, Operations Manager of Chesapeake Homes, indicated that he believed it has been vacant since late 2005 or early 2006. He commented that the owner is in a nursing home.

Chairman Soule asked when the property was purchased.

Mr. Roper replied "April, 2006".

Anne Martin asked the square footage of the existing home.

Mr. Roper stated he did not have the exact answer to that question, but believes it is in the neighborhood of 2,800 square feet.

Anne Martin asked the square footage of the proposed home.

Mr. David Mastin, architect with St. Louis Design Alliance, stated the proposed home is 3,400 square foot not including the basement.

Anne Martin asked if the existing home was habitable.

Mr. Roper indicated that when they purchased the home, the kitchen was partially demolished and the boiler did not work. He stated the home looked like it had been vacated in order to begin renovation.

Anne Martin asked the average square footage of the houses in Claverach Park.

Jason Jaggi indicated that staff did not have that information readily available.

Anne Martin commented that because the proposed house is larger, that is why a variance is being requested.

Jason Jaggi commented that the existing home does comply with the setback requirements.

Chairman Soule asked Mr. Feder to discuss the homes in Claverach Park.

Mr. Feder indicated that he did not know the square footages of the homes in Claverach Park.

Mr. Solir Holtzman of Chesapeake Homes stated that the homes range in size from 2,500 square feet to 8,000 square feet.**

**Note this information was later corrected to indicate that the larger homes referred to are across Wydown in Brentmoor Park; not in Claverach Park.

Mr. Wally Council former Trustee of Claverach Park commented that the homes in Claverach Park range in size from 2,100 square feet to about 4,500 square feet.

Anne Martin asked if the 4,500 square foot homes are on the larger lots in Claverach Park.

Mr. Council replied “not necessarily”.

Mr. Mark Bluestone, 37 Hillvale, indicated that his house sits on one of the smaller lots and that his house is 3,500 square feet.

Rick Bliss referred an earlier comment made by Mr. Feder that the variance itself was in question. He asked for elaboration on that.

Mr. Feder stated that it is inappropriate now to state that a variance may not even be required to build as proposed and that at one time, it was not clear if the variance would be from the rear or side setback requirements.

Rick Bliss asked City Attorney O'Keefe if a rear yard variance is denied, could the decision be appealed if it is later determined that it is actually a variance from the side yard.

Kevin O'Keefe advised the members that the regulations governing the Board of Adjustment speak to variances from an Administrative decision and that an appeal for such decision could not be filed until the ability to request such variance is exhausted.

Rick Bliss asked about the question of the location of the property line.

Mr. Feder asked that the focus be on the variance request as it is not known for sure the exact location of the property line since two different surveying companies have come up with two different results. He stated if the result is that a 9.5' variance is needed, then a decision will have to be made at that time to either come back for an additional foot or revise the plan to comply with the 8.5' as requested. He stated his clients are attempting move forward so they can begin construction.

Kevin O'Keefe referred to the survey conducted by Stock & Associates that was performed on the adjacent property (30 Broadview) on August 25, 2006 and that the angular line is the same (with the exception of 1/10 of a foot) as the survey submitted for the variance, but that the difference is the location of (distance between) the existing structure at 30 Broadview and the property line which, in itself, would not reflect or have an impact on this request.

Rick Bliss asked if all are in agreement that the line is the line and that 8.5' is 8.5'.

Mr. Feder agreed. He indicated that Mr. Blanton (attorney representing the Bradley's) may not agree.

Rick Bliss referred to the two addresses mentioned in Mr. Margo's letter – 47 Hillvale and 22 Crestwood. He asked if those two homes applied for and whether or not received any variances.

Jason Jaggi stated he did not have that information at this time, but he could conduct some research to ascertain that information.

Kevin O'Keefe commented that the letter from Mr. Margo does not state that variances were required, only that these two houses were newer construction.

Mel Disney referred to an earlier statement in which conditions for which variances can be considered was mentioned. He stated that the Ordinances are established and that this is a fresh site with a set of rules and that the owners chose not to abide by those rules, but to exceed them and proceed with a variance.

Mr. Feder asked if the Board would like to see renderings of the new house.

The Board declined.

Mr. Feder reiterated that the majority of the lots in Claverach Park are rectangular in shape and that this is not a basic Claverach Park lot and that is a main reason variances are permitted to be sought.

Anne Martin asked if it is not possible to build a new house within the setback requirements.

Mr. Feder replied that “yes”, it is possible; however, a 3,400 square foot home is standard in today’s market.

Kevin O’Keefe asked Mr. Feder to describe the hardship in having a 2,800 square foot home.

Mr. Feder indicated the regulations also speak to practical difficulty and that such practical difficulty is the small room size and total square footage.

Kevin O’Keefe asked if the statement Mr. Feder is attempting to make is that the market forces require a larger living area.

Mr. Feder concurred. He added that a house of 3,400 square feet is typical in Claverach Park.

Mr. Christopher Blanton, attorney representing Mr. and Mrs. Bradley (911 Washington – St. Louis, MO 63101 – 231-2800) indicated that he only speaks to the variance as it affects his clients. He referred to a survey recently performed for the Bradley’s and of which a copy was provided to City staff.

Kevin O’Keefe indicated that the survey would be entered into the record and would be incorporated into the City’s file.

Mr. Blanton commented that if this Board grants the requested variance, then this Board is legislating the property line and that is precedent setting.

Ms. Elizabeth Bernhardt, 60 Claverach Drive, indicated that she is a historian and resident of Claverach Park and would like the residential park to be preserved. She stated she feels the variance is unnecessary and that the existing home fits perfectly and could easily be renovated. She stated that building (setback) lines are a matter of public record and should have been researched prior to design. She then presented a photograph of the “for sale” sign, indicating that the sign states the home to be 4,000 square feet. She stated that the residential park is to be used for fall festivals and asks that no construction work be done until the festivals are complete.

Chairman Soule asked Kevin O’Keefe to please describe this Board’s jurisdiction to the audience.

Kevin O’Keefe indicated that this Board is constrained in its decision making abilities and is a quasi-judicial proceeding. He stated that this Board’s only ability is to decide if a structure (or part thereof) can be placed within “X” distance from a property line. He stated that the removal, appearance and quality of structures are not within this Board’s purview.

Chairman Soule commented that Clayton has methods to discuss these other issues.

Kevin O’Keefe commented that the City’s Plan Commission and Architectural Review Board (ARB) determine site and aesthetic issues.

Ms. Joyce Stouthton-Kim, 47 Claverach Drive, stated that this is an uncomfortable situation for all involved. She stated that there is a strong spirit in Claverach Park and that this neighborhood was formed nearly a century ago and if 1,000 additional square footage is allowed, that opens the door for other developers.

Mr. Wally Council, 10 Ridgemoor, commented that the issue at hand is whether or not to grant a variance and that he believes much of the opposition is the demolition of the existing structure but that the price almost forbids that. He stated the existing structure is in much disrepair on the interior.

Mr. Rodger Bernhardt, 60 Claverach Park, asked that the photograph of the “for sale” sign be entered into the record.

Chairman Soule commented that as of 1:30 p.m. today, the sign was not there.

Kevin O’Keefe asked Mr. Bernhardt when the photograph was taken.

Mr. Bernhardt replied that the photograph was taken a couple of days ago by either his daughter or her friend. He reiterated the issue here is the variance and advised the members that only about 6 years ago, the owners of 66 Crestwood were denied a variance to simply construct an awning. He stated he believes granting a variance would be precedent setting. He stated the house is too big for the lot and asked that the variance be denied.

Mr. Dean Bradley, 30 Broadview, commented that the property line is the main issue for he and his wife. He stated that all three surveys differ in the location of the property line. He stated when he discussed this with City staff, he was informed that this type of thing happens. He stated there is a great deal of doubt with the location of the property line and as such, this effects him a great deal. He stated the applicants were made aware of the situation and decided to proceed anyway.

Kevin O’Keefe asked Mr. Bradley if the surveys differ in the distance between his home (structure) and the property line.

Mr. Bradley indicated that is correct.

Kevin O’Keefe stated that is not an issue for this Board. He stated the request is whether or not the new structure can be constructed with an 8.5’ variance from wherever that line may be. He stated if they are granted an 8.5’ variance, then that is what they get.

Mr. Michael Stemmler, 29 Ridgemoor, asked when the plans were completed.

Mr. Mastin indicated 6 to 7 weeks ago.

Ms. Judy Chapnick, 21 Hillvale, indicated she has been a resident of Claverach Park and realtor for many years. She stated that when their streets were re-done in the 1980’s, that is when surveys started disagreeing.

Mr. Mark Bluestone, 37 Hillvale, advised the Board that Mr. Deutsch kindly showed him his plans and that he has no problem with variances being granted when appropriate and he believes this variance is appropriate. He indicated his support of the variance. He noted that the subject “for sale” sign is inside the property leaning up against the building and within a 6-foot privacy fence.

Mr. Feder asked for a short recess to confer with his clients.

The meeting reconvened at 6:30 p.m.

Mr. Feder advised the members that he discussed the situation with his clients and notwithstanding tonight’s comments or the anonymous letter, they believe Claverach Park to be a good neighborhood and do not want to move into a neighborhood where they do not feel welcome but that they do, indeed, desire to live in Claverach Park and that if the only issue of concern is the variance, then they would prefer not to fight that battle. He stated they are prepared to submit a plan that would not require a variance, although they do so reluctantly, but noted that the house they intend to build will be larger than the existing structure. He stated that therefore, they would like to withdraw their request for the variance.

Chairman Soule asked if there is anything this Board needs to do procedurally.

Kevin O’Keefe replied “no”; they can just adjourn.

Chairman Soule commented that he believes Clayton to be a welcoming community and is a terrific place to live. He reminded everyone that this Board is very limited in its powers. He complimented the new owners and stated he believes they would be a great addition to the neighborhood. He thanked everyone for their input. He stated he approves their request to withdraw the variance.

The members were advised that there will be no meeting in October.

Being no further business for the Board of Adjustment, this meeting adjourned at 6:40 p.m.

Recording Secretary